IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4782 of 2006
to
FIRST APPEAL No. 4801 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER - Appellant(s)
Versus
KARANSANG MADHUBHA & 1 - Defendant(s)

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Appearance:
MR SS SHAH, GOVERNMENT PLEADER for Appellant(s) (In FA 4782/06 to 4790/06) MR KRUNAL D.PANDYA, AGP for Appellant(s) (In FA 4791/06 to 4801/06
MR GM AMIN, for Respondent(s)-Claimant(s)

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 08/01/2007

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. What is challenged in these Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of the common judgment and award dated September 9, 2004, rendered by the learned Extra Assistant Judge and Special Judge (LAR) Ahmedabad (Rural) at Navrangpura in Land Acquisition Case No.2607 of 1996 to Land Acquisition Case No.2627 of 1996, by which the claimants have been awarded additional amount of compensation at the rate of Rs.27.60 ps. per sq.mt. for their acquired lands over and above the compensation offered to them at the rate of Re.0.40 ps. per sq.mt. by the Special Land Acquisition Officer vide award dated February 22, 1996.

2. The Executive Engineer, Narmada Yojna, Saurashtra Branch Canal, Division No.2/4, Bhavnagar, proposed to the State Government

to acquire the lands of village Zinzer, Taluka: Dhandhuka, District: Ahmedabad, for the public purpose of construction of canal under the Narmada Project. On receipt of the said proposal, the State Government was satisfied that the lands mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the official gazette on June 5, 1993. The land owners whose lands were proposed to be acquired were served with notices under Section 4 of the Act. On receipt of notices, the land owners opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Zinzer, which were specified in the notification published under

Section 4(1) of the Act were needed for the public purpose of construction of canal under the Narmada Project. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on May 27, 1994. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.30/- per sq.mt. However, having regard to the material placed before him, the Clavicle Land Acquisition Officer, by his award dated February 22, 1996, offered compensation to the claimants at the rate of Re.0.40 ps. Per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, the submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of

just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Case No.2607 of 1996 to Land Acquisition Case No.2627 of 1996.

3. On behalf of the claimants, witness Jagdevsinh Ladhubha Chudasama was examined at Ex.33. The said witness mentioned in his testimony that the lands acquired were highly fertile and that each claimant was earning the net income of Rs.40,000/- per Vigha per year from the sale of agricultural produces such as Cotton, Juwar, Gram, Wheat, etc. The witness mentioned that the boundary of village Zinzer was touching the boundary of village Akaru and that the lands of village Akaru which were similar in all respects to the lands acquired in the instant case were also acquired for the said public purpose. The witness asserted that the claimants whose lands were acquired from village Akaru were

awarded compensation at the rate of Rs.28/- per sq.mt. and therefore, the claimants in the instant case were also entitled to the same compensation. According to this witness, Dhandhuka town, which is a Taluka town, was at a distance of one kilometer from the lands acquired in the instant case and as the claimants, whose lands were acquired from Dhandhuka town were awarded compensation at the rate of Rs.52.50 ps. per sq.mt., the claimants should also be awarded enhanced compensation as claimed by them. Though this witness was cross-examined at length, nothing substantial could be elicited nor the assertion made by the witness that the lands of village Akaru which were previously acquired were similar in all respects to the lands acquired in the instant case could be demonstrated to be untrue.

4. On behalf of the acquiring authorities, witness Abdulbhai Usmanji Patel, who was then Deputy Executive Engineer of village Zinzer

was examined at Ex.44. The witness mentioned in his testimony before the Court that the Special Land Acquisition Officer had taken into consideration all the relevant factors before determining the compensation payable to the claimants and therefore, the claimants were not entitled to enhanced compensation. However, in his cross-examination, the witness had to admit that the canal was coming from village Akaru to village Zinzer from which it was going towards Dhandhuka town. It was also admitted by the witness that the last survey number of village Akaru which was acquired for the public purpose of construction of canal under the Narmada Project was touching the first survey number of village Zinzer which was also acquired for the public purpose of construction of canal under the Narmada Project.

5. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the

Reference Court relating to the lands of village Akaru was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. The Reference Court deduced that the previous award of the Reference Court relating to Dhandhuka town was not a relevant piece of evidence because of the distance between the lands previously acquired from Dhandhuka town and the lands acquired in the instant case. In view of the abovereferred to findings, the Reference Court relied upon the previous award of the Reference Court relating to the lands of village Akaru and has awarded additional amount of compensation at the rate of Rs.27.60 ps. per sq.mt. by the impugned award, giving rise to the abovenumbered Appeals.

6. This Court has heard Mr.Sunit S.Shah, learned Government Pleader with Mr.Krunal D.Pandya, learned Assistant Government Pleader, for the

appellant and Mr.Gopinath M.Amin, learned counsel for the claimant / claimants in each Appeal. This Court has also considered the paper-book supplied by the learned counsel for the claimant / claimants which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

7. It is true that the witness for the claimants could not make his assertion good that each claimant was earning the net profit of Rs.40,000/- per year per Vigha from the sale of agricultural produces. However, the fact remains that the lands acquired in the instant case were highly fertile and that each claimant was able to raise different crops in different seasons. This is quite evident from the contents of 7/12 Extracts produced by the witness for the claimants relating to the lands in question at Ex.19 to Ex.32. The record does not show that enhanced compensation was claimed by the claimants either on the basis of yield or on the basis

of comparable sale instances. What was relied upon by the claimants was the previous award of the Reference Court relating to the lands of village Akaru which was produced at Ex.33 and another award of the Reference Court relating to the lands of Dhandhuka town which was produced at Ex.36. As noticed earlier, it was satisfactorily proved by the claimants that the boundary of village Akaru was touching that of village Zinzer and that the last survey number of village Akaru which was acquired for the public purpose of construction of canal under the Narmada Project was touching the first survey number of village Zinzer, which was also acquired for the same public purpose. It could not be established by the claimants that the previous award of the Reference Court relating to the lands of Dhandhuka town was relevant for the purpose of determining the market value of the lands acquired in the instant case from village Zinzer. Therefore, this Court is of the opinion that no error

was committed by the Reference Court in discarding the previous award of the Reference Court relating to Dhandhuka town for the purpose of determining the market value of the lands acquired from village Zinzer. However, the evidence led by the claimants that the lands which were previously acquired form village Akaru were similar in all respects to the lands acquired in the instant case from village Zinzer could not be challenged effectively by the appellants. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of village Akaru for the purpose of determining the market value of the lands acquired form village Zinzer. Exhibit 16 which is the previous award of the Reference Court relating to the lands of village Akaru indicates that the lands of village Akaru were acquired for the public purpose of construction of canal under the

Narmada Project pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on June 5, 1993. Therein, the Special Land Acquisition Officer, by his award dated April 25, 1996, had offered compensation to the claimants at the rate of Re.0.60 ps. per sq.mt. Feeling aggrieved, the claimants had sought References. Accordingly, References were made to the District Court, Ahmedabad (Rural) where they were registered as Land Acquisition case No.2430 of 1996 to Land Acquisition Case No.2444 of 1996. It may be mentioned that therein, the claimants had claimed compensation at the rate of Rs.50/- per sq.mt. for their agricultural lands and in support of the said claim, the claimants had examined witness Dhirubhai Bhimjibhai Jadav at Ex.33 whereas on behalf of the acquiring body, witness Rambhai Haribhai Solanki was examined at Ex.32. On the basis of the evidence adduced by the parties therein, the Reference Court by judgment and

award dated October 3, 2002, awarded, in all, compensation to the claimants at the rate of Rs.28/- per sq.mt. It is well-settled that the previous award of the Reference court relating to the lands of a village which has attained finality can be relied upon as a good piece of evidence for the purpose of determining the market value of similar lands acquired from the adjoining village. It is not the case of the appellants that Ex.16, which is the previous award of the Reference Court relating to the lands of village Akaru, has not attained finality. Therefore, the Reference Court was justified in determining the market value of the lands acquired in the instant case on the basis of Ex.16. It is worth noting that in the instant case, notification under Section 4(1) of the Act was published in the official gazette on June 5, 1993, whereas with reference to the lands which were acquired from village Akaru also, notification issued under Section 4(1) of the Act was published in the official gazette on

the same day. On the facts and in the circumstances of the case, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court on appreciation of evidence adduced by the parties to which well-settled principles of law have been applied. The learned Assistant Government Pleader could not persuade this Court to take a view different than the one taken by the Reference Court on the basis of appreciation of evidence adduced before it. Therefore, the Appeals which do not have merit deserve to be dismissed.

8. For the foregoing reasons, all the Appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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